IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1024 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DESAI RAMESHBHAI KARAMSHIBHAI - Applicant(s)
Versus
CHAMPABEN RAMESHBHAI K. DESAI & 1 - Respondent(s)

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Appearance :
MR PRAKASH K JANI for Applicant(s) : 1,
MR G RAMAKRISHNAN for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/09/2007
ORAL JUDGMENT

Rule. Shri G. Ramakrishnan, learned advocate waives service of Rule on behalf of respondents. With consent of the learned advocates appearing on behalf of the parties the

matter is taken up for final hearing today. By way of this petition under Article 227 of the Constitution of India the petitioner husband, original-respondent has prayed for an appropriate writ, direction or order quashing and setting aside the judgment and order dated 11.10.2006 passed by the learned JMFC, Sidhpur as well as the judgment and order dated 9.5.2007 passed by learned Additional Sessions Judge, Patan, in Criminal Revision Application No. 1 of 2007.

2. Respondents No. 1 and 2 herein submitted application before the learned JMFC, Sidhpur being Criminal Misc. Application No. 73 of 2005 against the petitioner for getting maintenance under Section 125 of the Code of Criminal Procedure at the rate of Rs. 5000 per month for wife and Rs. 2500 for respondent No.2 son. The learned JMFC, Sidhpur by judgment and order dated 11.10.2006 partly allowed the said application awarding maintenance to the wife at the rate of Rs. 800 per month and at the rate of Rs. 500 per

month to the son from the date of application. Being aggrieved and dissatisfied with the order passed by the learned JMFC, Sidhpur dated 11.10.2006 in Criminal Misc. Application No. 73 of 2005 in awarding maintenance at the rate of Rs. 800 per month to the wife and Rs. 500 per month to the son, respondents No. 1 and 2 preferred Criminal Revision Application No. 1 of 2007 before the learned Sessions Judge, Patan for enhancement of the maintenance amount and the learned Additional Sessions Judge, Patan by judgment and order dated 9.5.2007 allowed the said revision application by modifying the order passed by the learned Magistrate and enhancing the amount of maintenance to Rs. 3,500 per month to the wife and Rs. 2000 per month to the son. Being aggrieved and dissatisfied with the judgment and order dated 9.5.2007 passed by the learned Additional Sessions Judge, Patan in Criminal Revision Application No. 1/2007 as well as the original order passed by the learned JMFC dated 11.10.2006 the petitioner husband has

preferred the present petition under Article 226/227 of the Constitution of India for the aforesaid relief.

3. At the outset it is required to be noted that in the present petition the petitioner has also challenged the order passed by the learned JMFC, Sidhpur dated 11.10.2006 in Criminal Misc. Application No. 73 of 2005. However the petitioner has never challenged the said order before the Revisional Court and therefore it is not open for the petitioner now to challenge the said order before this Court more particularly in view of the fact that the said order has been merged into the order passed by the Revisional Court.

4. Shri Vyas, learned advocate appearing on behalf of the petitioner has vehemently submitted that the Revisional Court has committed an error in enhancing the amount of maintenance from Rs. 800 to Rs. 3500 per month to the wife and also in

awarding maintenance to the son as respondent No.2 herein who is major and a major son is not entitled to maintenance under Section 125 of the Cr.P.C. It is submitted that the petitioner is serving as a Peon in School and there was no evidence before the learned Revisional Court with regard to salary of the petitioner and the impugned order has been passed by the Revisional Court on presumption and surmises and conjectures. It is submitted that in absence of any evidence on record with regard to salary of the petitioner the Revisional Court ought not to have passed the impugned order. It is further submitted by him that even considering the salary slip which is produced before this Court the respondents are not entitled to maintenance at Rs. 3,500 per month as the petitioner is also required to maintain his mother and his sister's sons. Therefore it is submitted that to direct the petitioner to pay maintenance at the rate of Rs. 3500 per month even to the wife is too harsh and the same requires reconsideration and

requested to allow the present application.

5. On the other hand while opposing the present petition, the learned advocate appearing on behalf of the respondents has submitted that in the facts and circumstances of the case and on appreciation of evidence when the learned Revisional Court has enhanced the amount of maintenance and has directed to pay maintenance to the wife at the rate of Rs. 3500 per month it cannot be said to be illegal and/or too harsh considering the standard of living and price-rise at present. He has further submitted that the petitioner deliberately did not produce any documentary evidence before the Revisional Court with regard to his salary and when the Revisional Court has passed the impugned order looking to the present circumstances such as price-rise etc., the same is not required to be interfered with in exercise of powers under Article 226 of the Constitution of India. He has also relied upon decision of Division Bench of this Court in

the case of ***Karsanji Chatraji Hadiyol Vs. Jasuben Ramsingji Parmar & Others***, reported in ***(1997) 2 GLH Page 42*** wherein the Division Bench has held that even if it is found that there are some legal issues in that case also the order of maintenance passed by the learned Trial Court is not required to be interfered with in a petition under Article 227 of the Constitution of India. It is therefore requested to dismiss the present petition.

6. Heard the learned advocates appearing on behalf of the respective parties. At the outset, it is required to be noted that it is not disputed by the learned counsel appearing on behalf of the respondents that when the application for maintenance was submitted before the learned Magistrate, original-applicant No.2, respondent No.2 herein was a major Son. Considering the provisions of Section 125 of the Code of Criminal Procedure a major son is not entitled to maintenance under Section 125 of the

Code of Criminal Procedure and inspite of the fact that such an objection was raised before the learned Magistrate as well as before the revisional court both the courts have not considered the same. Under the circumstances and when the respondent No.2 herein was major even at the time of making application before the learned JMFC and the same is not disputed it is to be held that the respondent No.2 is not entitled to maintenance from the petitioner under Section 125 of the Cr.P.C., and to that extent the judgment and order passed by the Revisional Court is required to be quashed and set aside.

7. Now so far as the order passed by the Revisional Court enhancing the amount of maintenance to be paid to the wife from Rs. 800 per month to Rs. 3500 per month is concerned, at the outset it is required to be noted that the petitioner did not produce any documentary evidence pertaining to the salary before the learned JMFC and/or before the Revisional Court.

Hence in absence of any evidence and on appreciation of the fact situation of the case on hand learned Revisional Court was required to pass the order to enhance the amount of maintenance from Rs. 800 per month to Rs. 3500 per month to the wife. Now, looking to the present life-style and price-rise it cannot be said that wife is not entitled to Rs. 3500 per month for her maintenance. Salary Slip of the petitioner is produced before this Court from which it appears that the gross amount received by the petitioner is Rs. 6,201 and after deduction of amount towards P.F., etc., his take-home salary is Rs. 5015. Now so far as deduction towards P.F. is concerned, it is the saving which is required to be included in the income of the husband. Considering the above it cannot be said that the Revisional Court has committed any error in awarding maintenance to the wife at the rate of Rs. 3500 per month which cannot be said to be an amount on higher side in these hard days. It may be that the petitioner might have some other

liability/responsibility but at the same time the wife is also entitled to get maintenance in order to maintain herself. As held by the Division Bench of this Court in the case of ***Karsanji Chatraji Hadiyol*** [supra], even if there are some legal issues in a case related to maintenance the same are not required to be interfered with in a petition under Article 227 of the Constitution of India. No illegality has been committed by the Revisional Court in enhancing the amount of maintenance to the wife by directing the petitioner to pay maintenance at the rate of Rs. 3500 per month. There is no jurisdictional error much less any error of law committed by the learned Revisional Court.

8. For the reasons stated above, the petition succeeds in part. The order passed by the learned Revisional Court, qua the respondent No.2 herein, i.e., Son who is major, is required to be quashed and set aside and the same is quashed and set aside. So far as the order

passed by the Revisional Court awarding maintenance to the wife respondent No.1 herein and directing the petitioner to pay maintenance at the rate of Rs. 3500 per month from the date of application is concerned, the same is hereby confirmed. Rule is made absolute to the aforesaid extent.

9. It is reported that the petitioner has already deposited the amount of Rs. 15,000 as per the order dated 11.7.2007 passed by this Court. The respondent No.1 is entitled to withdraw the said amount. Office is therefore directed to issue cheque in the name of respondent No.1 herein within the period of two weeks from today and the said amount is to be adjusted towards past arrears.

[M.R. Shah, J.]

rmr.